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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,246	01/18/2001	Jonathan Lowthert	BJA.0008US	8160

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TROP PRUNER & HU, PC  
1616 S. VOSS ROAD, SUITE 750  
HOUSTON, TX 77057-2631

EXAMINER
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RAMAN, USHA

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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08/10/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/765,246

Applicant(s)

LOWTHERT ET AL.

Examiner

Usha Raman

Art Unit

2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: With respect to the rejection of claims 1-28 and 30-34, Applicant's recites the claims limitations and further argues that "...there is no choosing on the receiver an advertising resource in the first set...no choosing, on the receiver, of any particular advertisement. Instead, the choice is done for the receiver by the uplink station (see page 8, of Applicant's Remarks).

In response, Examiner disagrees. Examiner notes Applicant's arguments, however, Picco teaches a first subset listing of advertisement (schedule of advertisements with program content for a particular geographic area) that is generated by a remote processor in accordance with a statistical data regarding a geographic area, and a second subset of advertisement (a second subset listing of single advertisement that matches a user's characteristics) that is finer tuned to a characteristic of a particular receiver (col.7, lines 56-67 and col.8, lines 1-5 and figure 9). Picco teaches collecting information about one or more characteristics of the receiver (see col.7, lines 15-24), provides the collected information to a remote processor based system (data provided to agent 150, where the agent 150 determines based on collected statistical data, the local content that is going to be combined with programming, and therefore determines a schedule or first subset listing of the local content (advertising resources) with programming. The local content further comprises content profiles or "guidelines" for distributing the advertising materials on the receiver (col 6, lines 62-67). Picco accordingly meets the limitation of the receiver receiving, from the remote processor-based system, a first subset listing of advertising resources and guidelines for distributing advertising materials on the receiver, the first subset listing of advertising resources selected from a database of advertising resources based on at least one of the one or more characteristics of the receiver. Picco additionally discloses that only select receivers matching the criteria of the distribution variable of the local content may download the local content (See col.7, lines 56-67 and col8, lines 1-5, and figure 9). Therefore, while an agent may determine the scheduling of five advertisements combined with a particular programming, only the advertisements may match the distribution variable (e.g. only one advertisement matches a receiver criteria) at a particular receiver are downloaded. Accordingly Picco teaches the claimed limitation of automatically and selectively choosing on the receiver without user intervention (choosing is based on distribution variable and receiver characteristics), an advertisement resource from the first subset listing based on a given characteristic of the receiver to compile a second subset listing (a single advertisement matching the distribution variable) of advertising resources, the second subset listing of the matched advertisement being finer tuned to a characteristic (downloaded advertisements are based on the geographic statistics as well as receiver characteristics) of the receiver than the first subset listing (which is based on geographic statistics); and capturing (downloading) an advertisement listed on the second subset listing of advertising resources to store the advertisement on the content receiver (see col.7, lines 56-61). Hence, Applicant's arguments are not persuasive, the rejection of claims 1-28 and 30-34, is proper, meet all the claims limitations. The finality of the last office action is hereby maintained.